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Opinion No. 03-091

Application of Open Meetings Act to Economic Development Board

QUESTION

The Tennessee Local Government Planning Advisory Committee has determined that the Economic Development Board of Unicoi County satisfies the requirements of a joint economic and community development board, required under Tenn. Code Ann. § 6-58-114. Are meetings of the Board subject to the Open Meetings Act, Tenn. Code Ann. §§ 8-44-101, *et seq.*?

OPINION

Meetings of the Board during which it carries out its function as a joint economic and community development board under Tenn. Code Ann. § 6-58-114 are subject to the Open Meetings Act.

ANALYSIS

This opinion is intended to supplement and revise Op. Tenn. Atty. Gen. 03-063 (May 14, 2003). In that opinion, this Office concluded that, based on the facts available to the Office at that time, meetings of the Economic Development Board of Unicoi County (the "Board") are not subject to the requirements of Tenn. Code Ann. §§ 8-44-101, *et seq.* (the "Open Meetings Act"). Since that opinion was issued, staff of the Local Government Planning Advisory Committee ("LGPAC") have informed us that, on the petition of the Unicoi County Executive under Tenn. Code Ann. § 6-58-114(j), the Committee has determined that the Board satisfies the requirement for a joint economic and community development board under Tenn. Code Ann. § 6-58-114. Under that statute, local governments within a county are required to establish a joint economic and community development board by interlocal agreement under Tenn. Code Ann. § 5-1-113. The purpose of the board is to foster communication relative to economic and community development between and among governmental entities, industry, and private citizens. Tenn. Code Ann. § 6-58-114(b). The board must be composed of representatives of city and county governments, private citizens, and present industries and businesses. Tenn. Code Ann. § 6-58-114(c). Subsection (f) of the statute provides:

> The board shall meet, at a minimum, four (4) times annually and the executive committee of the board shall meet at least eight (8) times annually. Minutes of all meetings of the board and the executive

> committee shall be documented by minutes kept and certification of attendance. *Meetings of the joint economic and community development board and its executive committee are subject to the open meetings law.*

(Emphasis added). When applying for any state grant, a city or county must certify its compliance with the requirements of this statute. Tenn. Code Ann. § 6-58-114(i). Under subsection (j), LGPAC may determine that an existing organization within a county may satisfy the requirement for a joint economic and community development board under this statute. Subsection (j) provides:

> If there exists within a county a similar organization on May 19, 1998, that organization may satisfy the requirements of this section. The county executive shall file a petition with the committee which shall make a determination whether the existing organization is sufficiently similar to the requirements of this section. When the committee has made its determination, an affected municipality or county may rely upon that status of the existing organization to satisfy the certification requirements of subsection (i).

Staff members of LGPAC have informed us that, upon the petition of the Unicoi County Executive, the Committee determined that the Board is sufficiently similar to a joint economic and community development board required under the statute to satisfy its requirements. We think an essential part of these requirements is that meetings of any entity and its executive committee deemed to play the role of a joint economic and community development board be held in compliance with the Open Meetings Act, in accordance with Tenn. Code Ann. § 6-58-114(f). In any case, we think that the Committee's designation of any entity as the equivalent of a joint economic and community development board under this statute converts that entity, at least with respect to meetings where it acts in that capacity, to a "governing body" within the meaning of the Open Meetings Act.

Under the Open Meetings Act, all meetings of any governing body are declared to be public meetings open to the public at all times, except as provided by the Tennessee Constitution. Tenn. Code Ann. § 8-44-102(a). The Act defines "governing body" in relevant part as follows:

> (b) (1) "Governing body" means:
> (A) The members of any public body which consists of two (2) or more members, with the authority to make decisions for or recommendations to a public body on policy or administration . . ..

Tenn. Code Ann. § 8-44-102(b)(1). The term "public body" is not defined in the Open Meetings Act; however, the Tennessee Supreme Court has noted with respect to the term:

> It is clear that for the purpose of this Act, the Legislature intended to include any board, commission, committee, agency, authority or any other body, by whatever name, whose origin and authority may be traced to State, City or County legislative action and whose members have authority to make decisions or recommendations on policy or administration affecting the conduct of the business of the people in the governmental sector.

Dorrier v. Dark, 537 S.W.2d 888, 892 (Tenn. 1976), *rehearing denied*, 540 S.W.2d 658 (Tenn. 1976). Where an organization has been designated as the equivalent of a joint economic and community development board under Tenn. Code Ann. § 6-58-114, we think its origin and authority as that body may be traced to state legislative action. For this reason, we think such an entity has become a "governing body" subject to the Open Meetings Act, at least when it acts in its capacity as a joint economic and community development board. In addition, we think that the local governmental officials who serve on the board of such an entity do so in their official capacity. To the extent that Op. Tenn. Atty. Gen. 03-063 (May 14, 2003) is inconsistent with this opinion, it is overruled.

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